

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
April 16, 2015

v

CHAVEZ SULTHAN YOUNG,  
  
Defendant-Appellant.

No. 320422  
Saginaw Circuit Court  
LC No. 13-039100-FC

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Before: O'CONNELL, P.J., and FORT HOOD and GADOLA, JJ.

PER CURIAM.

Defendant, Chavez Sulthan Young, appeals as of right his convictions, following a jury trial, of armed robbery, MCL 750.529, two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and felon in possession of a firearm (felon in possession), MCL 750.224f. The trial court sentenced Young to serve concurrent terms of 252 months' to 40 years' imprisonment for his armed robbery conviction and 72 months' to 10 years' imprisonment for his felon in possession conviction, as well as a consecutive term of two years' imprisonment for his felony-firearm convictions. We affirm.

**I. FACTUAL BACKGROUND**

Dominique Grice testified that he was robbed at around 5:00 a.m. on August 15, 2013. According to Grice, he, his friend Deonte Hoking, and Young went to a gas station to purchase cigarettes. Grice considered Young an acquaintance. After the three men returned to their apartment complex, Grice stood on a sidewalk and talked on his cell phone while Hoking and Young went inside. A few minutes later, Young, Hoking, and a third man came back outside to the sidewalk. Young hit Grice across the head with a black semiautomatic pistol and demanded money. The other man pointed a pistol at Hoking. Grice threw his wallet at Young and fled to a nearby McDonald's restaurant, where someone called 911.

Buena Vista Township Police Officer Todd Brow testified that he saw a black Malibu in an abandoned lot on August 16, 2013. According to Officer Brow, the car's occupants were acting suspiciously. The car left the lot and then pulled into a driveway without using a turn signal. Officer Brow stopped the car and the driver, who Officer Brow later identified as Young, left the car. Young ran away while holding a dark semiautomatic handgun, and he continued to run after Officer Brow told him to stop. Officer Brow lost sight of Young and eventually found him hiding under a truck. He did not find the handgun.

Young testified on his own behalf. According to Young, when the men returned to the apartments, Grice acted like he wanted to fight with Young. A fight ensued and, during the fight, he lifted Grice up and “slammed him on his head.” Grice got up, punched Young, and ran. Young denied that he had a gun or took Grice’s wallet. Young testified that he had a black cell phone in his hand when he ran from police, not a handgun.

## II. PROSECUTORIAL MISCONDUCT

Young contends that the prosecutor committed misconduct during his closing argument when he urged two jurors, who were nurses, to consider whether Grice’s head wound was more consistent with being struck by a pistol or being picked up and slammed on the ground. According to Young, the prosecutor effectively asked the two jurors to function as witnesses. We disagree.

Young failed to object to the prosecutor’s statements. A defendant must specifically challenge alleged prosecutorial misconduct before the trial court to preserve the issue. *People v Unger*, 278 Mich App 210, 234-235; 749 NW2d 272 (2008). We review unpreserved claims of prosecutorial misconduct for plain error affecting the defendant’s substantial rights. *Id.* at 235. An error is plain if it is clear or obvious, and it affects the defendant’s substantial rights if it affected the outcome of the proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Error does not require reversal if a curative instruction could have alleviated the effect of the prosecutor’s misconduct. *Unger*, 278 Mich App at 235.

A prosecutor can deny a defendant’s right to a fair trial by making improper remarks that “so infect[] the trial with unfairness as to make the resulting conviction a denial of due process.” *Donnelly v DeChristoforo*, 416 US 637, 643; 94 S Ct 1868; 40 L Ed 2d 431 (1974). The prosecutor commits misconduct by abandoning his or her responsibility to seek justice and, in doing so, denying the defendant a fair and impartial trial. *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007). The prosecutor should not invite jurors to suspend their powers of judgment and decide the case on the basis of something other than the facts. See *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). We evaluate the prosecutor’s statements on a case-by-case basis, reviewing the prosecutor’s comments in context and in light of the evidence and the defendant’s arguments. *Id.* at 64.

In this case, the prosecutor made the following statement in closing argument:

He’s hit in the head with a gun, and we have a couple of RNs who are sitting on our jury. You see that injury. It’s a straight line injury on one part of the head, not the right side, the left side.

G[] and M[], you’re in the health field and you’re going to have to ask yourselves a question, is that consistent with being hit on the head with a blunt force object such as a gun as Dominique Grice reported to you, or is that consistent with being picked up somehow and being dumped on the top of his head? There are certain things that you’re going to be looking for that are going to be consistent with that kind of injury, and we’re going to talk about that a little bit later.

The evidence included photographs of Grice's injuries that police officers took after the robbery. It also included two contradictory accounts of how those injuries occurred.

It is the province of the jury to determine the credibility of the witnesses in light of the evidence, see *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998), and jurors may use common sense and everyday experience to do so. *People v Simon*, 189 Mich App 565, 567; 473 NW2d 785 (1991). We are unable to find any statutes or case law prohibiting the prosecutor from addressing specific jurors and asking them to evaluate specific evidence in light of their specific experiences. Since the two jurors would have used their experience as nurses when evaluating the evidence regardless, the question is whether the prosecutor's comment invited the other jurors to set aside their independent judgments. Considered in context, the prosecutor's remarks did not do so. A review of the prosecutor's entire argument shows that the prosecutor called on other individual jurors frequently, as if to keep them engaged. We conclude that even if there was error, it was not clear or obvious.

Further, a curative instruction, if warranted, could have cured the prejudicial effect of the prosecutor's argument. We also note that the trial court properly instructed the jurors regarding their role in determining facts and credibility, and instructed the jury that it should only consider the evidence presented and their own general knowledge when weighing the evidence. Overall, we are not convinced that the prosecutor's statements affected the outcome of Young's trial.

We conclude that even if error occurred,<sup>1</sup> it was not a plain error. Any error was not clear or obvious and did not affect Young's substantial rights.

### III. FLIGHT EVIDENCE

Young contends that the trial court improperly admitted irrelevant evidence that he fled from police the day after the robbery. We disagree.

This Court reviews for an abuse of discretion the trial court's decision to admit evidence and reviews de novo preliminary questions of law regarding the admissibility of evidence. *People v Duncan*, 494 Mich 713, 722; 835 NW2d 399 (2013). The trial court abuses its discretion when its outcome falls outside the principled range of outcomes. *Id.* at 722-723.

The trial court may only admit relevant evidence. MRE 402. Relevant evidence is evidence that has any tendency to make a fact of consequence more or less probable. MRE 401. Admission of irrelevant evidence violates a defendant's constitutional rights if it "so infused the trial with unfairness as to deny due process of law." *Estelle v McGuire*, 502 US 62, 75; 112 S Ct 475; 116 L Ed 2d 385 (1991) (quotation marks and citation omitted).

Evidence may be relevant even when it does not pertain to an element of an offense, as long as it pertains to a matter in controversy. *People v McGhee*, 268 Mich App 600, 637; 709

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<sup>1</sup> We are not convinced that the prosecutor's statement did, in fact, constitute error. But it is not necessary for us to decide this issue under the standard of review in this case.

NW2d 595 (2005). The res gestae of a crime are the facts and circumstances surrounding the commission of the crime. *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978); *People v Castillo*, 82 Mich App 476, 479; 266 NW2d 460 (1978). It is well-established that evidence of other crimes the defendant committed is relevant if the crimes are part of the res gestae of the offense. *People v Savage*, 225 Mich 84, 86; 195 NW 669 (1923). “Evidence of other criminal acts is admissible when so blended or connected with the crime of which defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime.” *Delgado*, 404 Mich at 83 (quotation marks and citation omitted).

Evidence of the defendant’s consciousness of guilt is also relevant and may be highly probative. *People v Schaw*, 288 Mich App 231, 237-238; 791 NW2d 743 (2010). Evidence of flight is admissible to support an inference of the defendant’s consciousness of guilt. *Unger*, 278 Mich App at 226. Flight includes running from the police, resisting arrest, or attempting to escape custody. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995).

In this case, Officer Brow testified that Young fled from police officers while carrying a hand gun on the day after the robbery. Young’s second crime took place one day after the first crime, but was not so temporally remote that it was no longer part of the res gestae of the robbery. See *Delgado*, 404 Mich at 83-84 (no abuse of discretion when res gestae included crimes seven days before the charged offense). Further, this evidence was certainly relevant as evidence of Young’s consciousness of guilt. We conclude that the evidence was relevant, and the trial court did not abuse its discretion by admitting it.

We note that Young also contends that the evidence was more prejudicial than probative. However, parties abandon issues on appeal if they “merely announce their position and leave it to this Court to discover and rationalize a basis for their claims.” *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004). Because Young conclusively contends in one sentence that the evidence was unduly prejudicial without any analysis or discussion of the relevant law, we conclude that he has abandoned this issue.

Affirmed.

/s/ Peter D. O’Connell  
/s/ Karen M. Fort Hood